REMARKS

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed September 6, 2005. Claims 2, 5, 6, 8, 13, 16-18, 26, 29, 31 and 32 have been withdrawn. 1, 3, 7, 9-12, 14, 19-25, 27 and 30 are rejected. In this Amendment no new matter has been added.

Rejections under 35 U.S.C. § 102(e)

The Examiner has rejected claims 1, 3, 7, 9-12, 14, 19-25, 27 and 30 are rejected under 35 U.S.C. §102(e) as being anticipated by Lei,et al., (U.S. Patent No. 6,833,195, hereinafter "Lei"). As discussed below, the above reference does not quality as a prior art with respect to the instant application.

Under 35 U.S.C. §102(e), a person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the application for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language. (emphasis added)

Applicant respectfully submits that the cited art, Lei's U.S. 6,833,195 does NOT met the "by another" requirement of 35 U.S.C. §102(e).

According to the MPEP Section 706.02(f), "in order to apply a reference under 35 U.S.C. §102(e), the inventive entity of the application must be different than that of the reference." (See MPEP page 700-727).

The section 706.02(f) of the MPEP provide further that "when there are joint inventor, only one inventor need be different for the inventive entity to be different and a rejection under 35 U.S.C. §102(e) is applicable even if there are some inventors in common between the application and the reference." (See MPEP page 700-727). This is not the case for the instant application. Lei's U.S. 6,833,195's inventive entity is Ryan Lei and Mohamad A. Shaheen. The inventive entity of the instant application is the same, Ryan Lei and Mohamad A. Shaheen. Therefore, under 35 U.S.C. §102(e) Lie 6,833,195 cannot be a prior art to the instant application and thus does not qualify to be used against the instant application.

Additionally, according to the MPEP §2136.01, which defines the meaning of "By Another" such as used in 35 U.S.C. §102(e), to means other than applicants. *In re Land*, 368 F.2d 866, 151 USPO 621 (CCPA 1966). In other words, to be a patent granted on an application for patent by another, under 35 U.S.C. §102(e), there has to be a different inventive entity in Lei's 6,833,195 compared to the instant application. (See MPEP, page 2100-69 to 2100-97).

Here, in the instant application and Lei's 6,833,195, the inventive entity is exactly the same. Thus, the Examiner failed to show the prima facie evidence that the instant application has invented "by another," as set forth in 35 U.S.C. §102(e) (see also MPEP 2136.04, 2100-101.) Lei's 6,833,195 is thus not a prior art under this section.

Therefore, Applicant respectfully request the Examiner to withdraw the 35 U.S.C. §102(e) rejection for the reasons stated above.

Applicant further respectfully requests the Examiner to withdraw the 103 (a) rejection for the same reasons stated above. As above, since Lei 6,833,195 does not qualify as a prior art under 35 U.S.C. §102(e), 35 U.S.C. §103 does not apply in this instant application since

according to 35 U.S.C. §103(a), (c), Lei 6,833,195 does not qualify as a prior art under 35 U.S.C. §102(e) to invoke 35 U.S.C. §103(a).

With regard to the discussion and issues raised by the Examiner in the Office Action, Applicant is not expressing an opinion on the subject matter at this point since Lei 6,833,195 does not qualify as the prior art as previously discussed.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Mimi Dao at (408) 720-8300.

Deposit Account Authorization

Pursuant to 37 C.F.R. 1.136(a)(3), applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 9/30/, 2005

Mimi Diemmy Dao
Attorney for Applicant
Registration No. 45,628

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300